

**In the United States Court of Federal Claims**  
**OFFICE OF SPECIAL MASTERS**

**No. 03-1224V**

**Filed: 16 October 2008**

\* \* \* \* \*

ANGELICA BLACK, a minor, by her	*
mother and natural guardian,	*
THERESA BLACK	*
	*
Petitioner,	*
	*
v.	*
	*
SECRETARY OF THE DEPARTMENT	*
OF HEALTH AND HUMAN SERVICES,	*
	*
Respondent.	*

\* \* \* \* \*

*Clifford John Shoemaker, Esq.*, Shoemaker & Associates, Vienna, Virginia, for Petitioner;  
*Alexis B. Babcock, Esq.*, U.S. Department of Justice, Washington, D.C., for Respondent.

**DECISION ON PROFFER AND ACCEPTANCE<sup>1</sup>**

On 16 May 2003, Petitioner brought a petition under the National Childhood Vaccine Injury Act of 1986 (“Vaccine Act” or “Act”).<sup>2</sup> On 25 October 2006, the Court ruled that Petitioner was entitled to compensation for vaccine-related injury.

Since that time, the parties have deliberated on the amount of damages apportionable to Angelica’s injury. On 15 October 2008, Respondent filed a proffer to compensate Petitioner for all injuries compensable by the Vaccine Program and on 16 October 2008, Petitioner filed an Acceptance of the Proffer, accepting the amounts contemplated in the Proffer.

---

<sup>1</sup> Petitioner is reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4) and Vaccine Rule 18(b), a petitioner has 14 days from the date of this ruling within which to request redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire decision” may be made available to the public per the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

<sup>2</sup> The statutory provisions governing the Vaccine Act are found in 42 U.S.C. §§300aa-10 *et seq.* (West 1991 & Supp. 1997). Hereinafter, reference will be to the relevant subsection of 42 U.S.C.A. §300aa.

The Proffer contemplates lost future earnings amounting to \$555,447.00, actual and projected pain and suffering damages in the amount of \$216,287.00, past unreimbursable expenses of \$6,916.00 and payment of a Medicaid lien in the amount of \$204,860.49. Respondent's proffer of future life care items is detailed in **Appendix A: "Respondent's Life Care Cost Projections Analysis and Recommendations with Petitioner's Comments,"** attached and incorporated hereto. Petitioner accepts those proffered amounts as the total amount attributable to the vaccine-related injury conceded to be entitled to compensation.

Wherefore, by the proffer and acceptance of the parties, and for good cause shown, the Court awards the following compensation to Petitioner for the vaccine-related injury(ies) sustained by Angelica Black, as represented by Theresa Black, Petitioner:

- A. A lump sum payment of **\$1,208,647.35**, representing compensation for lost future earnings (\$555,447.00) and pain and suffering (\$216,287.00), and life care expenses for Year One (\$436,913.35) in the form of a check payable to Natalie J. Miller as guardian/conservator of Angelica Black's estate, for the benefit of Angelica Black. No payments shall be made under this paragraph until Petitioner provides Respondent with documentation establishing the appointment of Ms. Miller as the guardian/conservator of Angelica's estate;
- B. A lump sum payment of **\$6,916.00**, representing compensation for past unreimbursable expenses, payable to Petitioner, Theresa Black;
- C. A lump sum payment of **\$204,860.49**, representing compensation for satisfaction of the State of North Carolina's Medicaid lien, payable jointly to Natalie J. Miller, as guardian/conservator of Angelica's estate, and Office of the Controller, North Carolina Department of Health & Human Services, Division of Medical Assistance, Third Party Recovery Section, 2022 Mail Service Center, Raleigh, North Carolina 27699-2022. Ms. Miller agrees to endorse this payment over to the Office of the Controller.
- D. An **amount sufficient** to purchase an annuity contract, subject to the conditions described in paragraph II. D. of Respondent's Proffer (incorporated herein by reference), paid to the life insurance company from which the annuity will be purchased.

The Court accepts these terms as just and reasonable. In the absence of a motion for review filed pursuant to Vaccine Rules 23 and 24, the Clerk is directed to enter judgment in accord with this Decision.<sup>3</sup>

The parties are encouraged at this time to discuss attorney fees and costs incurred by Petitioner, so that Petitioner may expeditiously file an application for compensation of attorney fees and costs in a timely fashion, not later than 180 days after the entry of judgment on this Decision. Any further issues or queries should be directed to my law clerk, Isaiah Kalinowski, Esq., at (202) 357-6351.

**IT IS SO ORDERED.**

---

**Richard B. Abell**  
Special Master

---

<sup>3</sup> Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review of this decision by a Court of Federal Claims judge. Then, under Vaccine Rule 12(a), Petitioner may expedite payment by filing an election to accept the judgment.